



UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
www.uspto.gov

Schwartz Law Firm, P.C.
South Park Towers
Suite 530
6100 Fairview Road
Charlotte NC 28210

COPY MAILED

AUG 22 2008

In re Application of
Lee Mantis
Application No. 10/758754
Filing or 371(c) Date: 01/16/2004
Attorney Docket Number:
135/2

OFFICE OF PETITIONS

ON PETITION

This is a decision on the "Petition to Commissioner to Withdraw Holding of Abandonment," filed April 15, 2008. The petition is properly treated under 37 CFR § 1.181(a). The delay in treating this petition is regretted.

This Petition is hereby **dismissed**.

Any further petition must be submitted within TWO (2) MONTHS from the mail date of this decision. Extensions of time under 37 CFR 1.136(a) are permitted. The reconsideration request should include a cover letter entitled "Renewed Petition under [insert the applicable code section]." This is **not** final agency action within the meaning of 5 U.S.C. § 704.

The above-identified application became abandoned for failure to timely/properly reply to the Notice of Allowance and Issue Fee Due, and Notice of Allowability, mailed November 28, 2007. The Notices set a non-extendable three (3) month period for reply. No response having been received, the application became abandoned on February 29, 2008. A Notice of Abandonment was mailed March 25, 2008.

Applicant's Assertion

Applicant files the present petition and asserts that a timely reply to the Notice, to wit – the issue, was filed on February 28, 2007. Applicant provides that as a result of a typographical error the date entered on the Certificate of Mailing was mistakenly indicated as February 29, 2008. In support of this assertion, Applicant files a copy of his return-receipt postcard and a copy of the check that accompanied the form, both of which are dated February 28, 2008.

Applicable Law, Rules and MPEP

37 CFR 1.8(a), Certificate of mailing or transmission, states in relevant part:

(a) Except in the situations enumerated in paragraph (a)(2) of this section or as otherwise expressly excluded in this chapter, correspondence required to be filed in the U.S. Patent and Trademark Office within a set period of time will be considered as being timely filed if the procedure described in this section is followed. The actual date of receipt will be used for all other purposes. (1) Correspondence will be considered as being timely filed if:

(i) The correspondence is mailed or transmitted prior to expiration of the set period of time by being:

(A) Addressed as set out in § 1.1(a) and deposited with the U.S. Postal Service with sufficient postage as first class mail;

(B) Transmitted by facsimile to the Patent and Trademark Office in accordance with § 1.6 (d); or

(C) Transmitted via the Office electronic filing system in accordance with § 1.6(a)(4); and

(ii) The correspondence includes a certificate for each piece of correspondence stating the date of deposit or transmission. The person signing the certificate should have reasonable basis to expect that the correspondence would be mailed or transmitted on or before the date indicated.

The MPEP 512, Certificate of Mailing or Transmission, states in relevant part:

Under 37 CFR 1.8, a person may state on certain papers directed to the Office (some exceptions are stated in 37 CFR 1.8), the date on which the paper will be deposited in the United States Postal Service or transmitted by facsimile. If the date stated is within the period for reply, the reply in most instances will be considered to be timely. This is true even if the paper does not actually reach the Office until after the end of the period for reply. (Emphasis supplied).

Id.

Analysis

The date on the Certificate of Mailing appearing on the Issue Fee Transmittal Form is February 29, 2008. The return-receipt postcard filed to support the assertion that the issue fee was submitted, does not contain a USPTO date stamp indicating that the Issue Fee was received prior to February 29, 2008. The date on the check is evidence only of the date of execution of the check, and not evidence that the check was filed on February 28, 2008. The Declaration of Kristen Bryant is not more persuasive than the application papers located in the file.

Conclusion

Applicant has failed to demonstrate that the procedures of 37 CFR 1.8(a) were followed such that the Issue Fee would be considered timely filed on February 28, 2008. The petition is dismissed.

Further correspondence with respect to this matter should be addressed as follows:

By mail: Director for Patents
 PO Box 1450
 Alexandria, VA 22313-1450

By FAX: (571) 273-8300
 Attn: Office of Petitions

By hand: Customer Service Window
 Randolph Building
 401 Dulany Street
 Alexandria, VA 22314

Telephone inquiries concerning this matter should be directed to the undersigned at (571) 272-3232.

/Derek L. Woods/
Derek L. Woods
Attorney
Office of Petitions